



September 22, 2022

REGISTERED MAIL

Leslie Brandlmayr
Director
Howe Sound Samaritans' Foundation
Box 62
1250-1500 West Georgia St.
Vancouver BC V6G 2Z6

BN #: 89242 0746 RR0001
File #: 1084177

Dear Leslie Brandlmayr:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated October 19, 2018 (copy enclosed), in which Howe Sound Samaritans' Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from February 1, 2013, to January 31, 2015, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated January 21, 2019. Your reply has not alleviated our concerns with respect to the Organization's continued non-compliance with the requirements of the Act for registration as a charity. Our analysis of your representations are detailed in Appendix A attached.

Conclusion

The Organization was previously audited and agreed to implement corrective measures to address the areas of non-compliance identified in its first audit. Specifically, in 2010, the Organization agreed to implement corrective measures related to its disbursement quota shortfall and to become compliant with filing requirements related to its Form T3010, Registered Charity Information Return. However, the follow-up audit found that the corrective measures were not implemented and the Organization has continued to be non-compliant in these areas. In addition, the follow-up audit showed that the Organization has also failed to comply with numerous other fundamental requirements set out in the Act.

In particular, it was found that: the Organization failed to devote its resources to charitable activities; its activities lacked a public benefit; the Organization provided undue benefits; it made its resources available to a non-qualified donee; it made gifts not at arm's length that resulted in the Organization failing to eliminate their disbursement quota shortfall; it issued a donation receipt with no details of the gift-in-kind and at an inflated value; it failed to maintain adequate books and records, including lack of

supporting documentation for material transactions; it failed to file Form T2081, Excess Corporate Holdings Worksheet for Private Foundations; and, it failed to file Form T3010, ~~Registered Charity Information Return~~, on time and in prescribed form. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 19, 2018, and pursuant to subsections 168(1), 149.1(4) and 149.1(4.1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), and 168(1)(e), subsection 149.1(4) and paragraph 149.1(4)(d), of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
892420746RR0001	Howe Sound Samaritans' Foundation Vancouver BC

In addition, due to the serious nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

Should the Organization choose to object to this notice of intention to revoke its registration, in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within 90 days from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix B, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at **canada.ca/charities-giving**;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of

income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

A black rectangular box redacting the signature of the Director General.

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A – CRA comments on representations
- Appendix B – Relevant provisions of the Act
- CRA letter dated October 19, 2018

c.c.: Blake Bromley

**Howe Sound Samaritans' Foundation
Comments on Representations of January 21, 2019**

In our administrative fairness letter (AFL), dated October 19, 2018, we explained that the latest audit conducted by the Canada Revenue Agency (CRA), for the period from February 1, 2013, to January 31, 2015, identified that Howe Sound Samaritans' Foundation (the Organization) has continued not to operate in compliance with the provisions of the Income Tax Act, despite having agreed to undertake corrective measures to resolve previously identified areas of non-compliance.

As indicated in our AFL, the present audit found non-compliance with the requirements of the Act in the following areas:

1. Failure to devote resources to charitable activities
 - a) Purchase of Archon shares
 - b) Due diligence of board of directors
 - c) Resourcing non-qualified donee(s)/gifts made not at arm's length
2. Failure to issue an official donation receipt in accordance with the Act and/or its Regulations
 - i) Receipt format
 - ii) Receipt issued not at fair market value
3. Failure to maintain adequate books and records
 - a) Lack of supporting documentation
 - b) Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations
4. Failure to file Form T3010, Registered Charity Information Return, on time and in prescribed form

We reviewed and considered the Organization's representations dated January 21, 2019, and note that our valuation report related to the purchase of the Archon shares was provided to the Organization in June 2019 as requested. No further responses were submitted by the Organization. The Organization's representations have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity.

The basis for our position, including our responses to the Organization's representations, is described below.

1. Failure to devote resources to charitable activities

a) Purchase of Archon shares

As stated in our AFL, the Organization purchased 3,288,400 Archon Minerals Ltd (Archon) shares at \$1.65/share. This amount was substantially greater than the fair market value (FMV) that was determined by a valuation performed by the CRA's Business Equity Valuation (BEV) section.

The BEV valuation determined that the Archon shares should be valued between \$0.94 and \$1.07/share, with a median value of \$1.01/share (median FMV). This value was determined by considering the low average daily trading volume (302,525 shares in the whole year prior to the Organization's purchase of 3,288,400 shares on one day). BEV calculated it would take 11 years to dispose of 3,288,400 shares at that annual rate of activity. As a result, the BEV valuator applied a block discount of 20% to 30%, due to the low trading volumes and the low liquidity of Archon Minerals Ltd.¹

To pay for this purchase of the Archon shares from █████ Blusson, the Organization issued a promissory note for \$5,425,860 payable to █████ Blusson. The following day, the Organization received a gift from a charity it did not deal with at arm's length, Global Charity Fund, in the form of a promissory note owing from █████ Blusson in the amount of \$4,515,757. This gift was recorded as reducing the amount payable to █████ Blusson to \$910,103. Two months later, the Organization issued an official donation receipt to █████ Blusson in the amount of \$911,103 in recognition of his decision to forgive the remaining debt.

Had the Organization completed these transactions using the median FMV as calculated by BEV, the promissory note issued by the Organization to █████ Blusson would have been in the amount of \$3,321,284. This would have put █████ Blusson in the position of still owing the Organization \$1,194,473 towards the promissory note received from Global Charity Fund (\$4,515,757 - \$3,321,284). We view this amount and the debt forgiveness as an unacceptable private and/or undue benefit the Organization provided to █████ Blusson.

We found that overall, the transactions involving the purchase of the 3,288,400 Archon shares did not further a charitable purpose, provided no public benefit, and provided a non-incidental private and/or undue benefit to █████ Blusson.

¹ The Archon Minerals Ltd. audited financial statements, for at least the 2011/2012 to the 2017/2018 fiscal years, contain an auditor's note saying, "Without modifying our opinion, we draw attention to Note 1 in the financial statements which indicates that the Company has limited working capital, losses since inception and is dependent upon its ability to continue receiving financing from related parties or, alternatively, secure new sources of financing. These conditions, along with other matters as set forth in Note 1, indicate the existence of a material uncertainty that may cast significant doubt about the Company's ability to continue as a going concern." www.sedar.com

Organization's Response (copied as written)

"It is clear upon reading the AFL that the auditor's determinations of the areas of non-compliance relate primarily to the Organization's decision to purchase Archon shares on November 29, 2013. Each of the issues set out on page 1 of the AFL flow from this decision to purchase Archon shares. We note that the auditor was provided with a copy of the Purchase and Sales Agreement and was fully aware of the complexity of the transaction with respect to the number of parties involved and the reasons why the directors decided to purchase the shares. It is also clear that the auditor's findings relied heavily upon the valuation of these shares provided by the Business Equity Valuation area of CRA ("the BEV").

The AFL's reliance on the BEV valuation is concerning to us. Accordingly, the first priority in our view is to address this matter.

The Canada Revenue Agency (CRA) states that fair market value ("FMV") "is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are knowledgeable, informed, and prudent, and who are acting independently of each other."² The BEV primarily relies on the assumption that this transaction equates to flooding the market which would result in a lower trading price, or alternatively, a high-volume transaction would result in a block discount. We disagree that the valuation of shares in this transaction should be entirely based on the assumption that this transaction should be viewed as if these shares flooded the market on a single day triggering a feeding frenzy that would result in a fire-sale price. We also disagree that based on a large volume sale, a block discount must necessarily apply.

First and foremost, it is difficult to argue (or defend for that matter) the BEV's analysis considering it is based on an event that didn't happen. According to the AFL, the findings of the BEV determined that 'even though the shares were traded on a listed stock exchange, the volume of shares purchased far exceeded the daily average volume of shares traded. Therefore, if a person was to sell 3,288,400 shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. As a result, the valuation by the BEV determined a fair market value in the range of \$.94 to \$1.07 per Archon share with a median fair market value of \$1.01 as at November 29, 2013. This price range is a result of applying a block discount related to the high volume of shares purchased at once.' With respect to the trading profile of Archon shares, it is just as reasonable to expect that a block sale could attract a premium as much as a discount as that a block of these shares may be more valuable than acquiring single shares.

Further, the AFL suggests that the trading price for the day of the gift was an anomaly 'because it was \$.45 higher than the previous 17 trading days' closing price of \$1.20. If one looks at the historical records of the trading price of Archon, it is apparent that it is more volatile than many

² <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuingreceipts/determining-fair-market-value-gifts-kind-non-cash-gifts.html>

publicly traded shares. To a knowledgeable buyer and seller, this would not be an anomaly but a reflection of the trading profile of those shares.

The AFL indicates that the auditor then used the BEV valuation to support a full cycle of concerns and issues set out in the AFL. Based on the BEV values, the AFL reports that the auditor determined that the Organization overcompensated the seller resulting in a private and/or under (sic) benefit, the Organization did not devote its resource exclusively to charitable purposes and activities, and the directors were not diligent in their duties to act in the best interests of the Organization. Further, the Organization issued a receipt for a subsequent donation relating to the shares which was issued not at FMV.

The AFL also states that the directors "knew or should have known that had the shares been purchased openly on the stock exchange that the market would not have endured a value of \$1.65." The directors respectfully advise that they do not agree with this assertion, and do not appreciate being advised that they should have guessed at a potential BEV valuation and assumed that such a valuation would be correct. As set out earlier, the BEV valuation is based on a market scenario that didn't happen. Further, both CRA and the sector use the trading price of publicly traded shares as an acceptable valuation and the use of the trading price as a reasonable practice. It is in fact difficult to fathom how any well-informed buyer or seller could better determine a valuation than by using the trading price of the day and awareness of the historical trading profile or how any alternative valuation based on an event that didn't happen could be considered more valid or more reasonable. The BEV noted that these shares are thinly traded which necessarily would mean that if the market was flooded the shares would drop or that a high volume sale would necessarily result in a block discount. We do not agree that the FMV of those shares on that day must necessarily be less than the trading price. Thinly traded shares are often highly coveted and highly sought-after investments. Historical records indicate the share price varies considerably but certainly on average is well within the \$1.65 per share range. The BEV valuation in our view has imposed external factors that did not apply.

We also note that in the AFL, you state that 'to merely accept the latest closing price of a share as fair market value, for a transaction involving millions of dollars, does not equate to due diligence and does not fulfill the obligations of the Board to act in the best interest of the Organization'. We respectfully respond that the Directors are not acting in the best interest of the Organization if they 'merely accept' the BEV valuation. Accordingly, we ask that before any further actions are taken on this matter, you please provide our office with all working papers and any other documentation in CRAs possession that explains and/or supports the BEV valuation.

The AFL also reports that "the Organization did not acquire the Archon shares for investment purposes since 2,000,000 of the shares were held for a brief period of time (approximately 47 days). Furthermore, the Organization did not receive any financial compensation related to the disposition of shares since they were gifted to another registered charity (Homestead) at \$1.25 per share, resulting in an \$800,000 loss to the Organization. In our view, these findings are ill-informed and short-sighted. The shares remained in the charitable sector so the sector as a whole

has benefitted regardless of which charity holds the shares as an investment. The shares remained within the charitable sector and there is no capacity for any registered charity to receive financial compensation for a gift to another registered charity. The Organization's accounting for the gift transaction necessarily requires a valuation. As such, the Organization used the valuation on the day of the gift which resulted in the financial records showing an \$800,000 loss on disposition. However, disposition by way of gift to another registered charity, which results in a 'financial loss' for the donor charity is moot. Any gift to a qualified donee by another qualified donee is not going to result in financial compensation for the donor charity. Further, if the Organization opted to liquidate these shares, it would almost certainly not opt to sell them all on the same day or at the very least would not do so if it resulted in a significantly discounted value as the BEV has suggested. Finally, you will know that the T3010 differentiates disposition by way of gift and disposition of assets by way of sale as it requires the Organization to report gross proceeds and net proceeds upon the disposition of sale of assets which does not accommodate gifts to Qualified donees."

CRA's Response

We note that Blake Bromley, [REDACTED] a Director of the Organization, responded to our AFL. The Organization took issue with the use of the BEV valuation but provided no support for their position or new information to address the concerns raised by the CRA.

It is stated in *De Santis v. The Queen*, 2015 TCC 95

"[26] In *Hickman Motors Ltd. v. Canada*, the Supreme Court of Canada established the principle that, in appealing the Minister's assessment, the taxpayer has the initial burden of making a prima facie case demolishing the Minister's assumptions in support of the assessment."

Our BEV valuation was performed by a professional valuator who followed specific and well established market trends. All of the assumptions and practices are shown in the valuation itself. The Organization has not provided any substantive documentation or analytical information to suggest that we should question the correctness of methods or assumptions used by the valuator. We believe this valuation provides the most reliable and objective method of determining the value of these shares. It is our position that the BEV valuation considers various other factors connected to the transaction that would not have been reflected in the open market price on the day of the transaction.

When defining fair market value, the CRA has identified several key elements to be considered. In particular "...open and unrestricted market..." and "...with a buyer and seller acting independently of each other". An analysis of the Archon share transactions, including

transactions in 11 other known charities³ that were registered by or operated from [REDACTED] indicate that Mr. Bromley was the bargaining agent for [REDACTED] Blusson, and the controlling mind of the Organization; therefore, the transactions cannot be at arm's length. Based on the facts in this case, it is our position that the transaction did not take place in an open and unrestricted market, and the buyer and seller were not acting independently of one another.

We also note that Mr. Bromley referenced a CRA document entitled: Determining fair market value of non-cash gifts in support of his premise; however, this document is a reference for valuations of donations of gifts-in-kind, not the purchase of shares.

b) Due Diligence of board of directors

Our AFL detailed the duties of directors of a registered charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. Indeed, trust law imposes upon directors of a registered charity the obligation to properly manage the assets of a charity. An organization's board of directors is to act in the best interests of the organization ensuring the interests of the charity are put ahead of those of any individual or entity.

We also expressed the view that the Organization did not acquire the Archon shares for investment purposes as 2,000,000 of the shares were only held for approximately 47 days. They were then gifted to Homestead on the Hill Foundation (Homestead), recorded at \$1.25/share, resulting in an \$800,000 loss reported by the Organization.

The audit found that the Organization's board meetings minutes and other books and records did not contain a record of any discussions regarding the purchase of the Archon shares, let alone the purpose of the transaction, nor was the gift made to Homestead discussed.

Organization's response:

The Organization did not agree with the CRA finding that the Board of Directors did not act with due diligence and in the best interests of the charity, and reiterated that the BEV valuation is based on a market scenario that did not happen. As well, the trading price of publicly traded shares is an acceptable valuation and that the use of the trading price is a reasonable practice. We were also informed that the directors did not "appreciate being advised that they should have guessed at a potential BEV valuation and assumed that such a valuation would be correct."

With regard to the gift to Homestead, the Organization submitted that our "findings are ill-informed and short-sighted. The shares remained in the charitable sector so the sector as a whole

³ Almoner Foundation; Mighty Oaks Foundation; CHIMP: Charitable Impact Foundation (Canada); Theanon Charitable Foundation; HSEF Renaissance Academy; Quest University Canada Foundation; Stewart & Marilyn Blusson Foundation; Association for Advancement of Scholarship; Global Charity Fund; Headwaters Foundation; and Prescient Foundation.

has benefited regardless of which charity holds the shares as an investment..." and "disposition by way of gift to another registered charity, which results in a 'financial loss' for the donor charity is moot."

CRA's response:

As discussed in our AFL, it is often difficult for directors of a registered charity to foresee whether an asset they propose to acquire on behalf of their charity will be a good investment; however, the rules of prudent administration require that they take responsible steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. Given that:

- the share purchase was for a large number of shares compared to historical trading volumes;
- Archon's financial situation at the time of the purchase was not positive and there was a going concern note in Archon's financial statements;
- the vendor of the shares controlled Archon and was the majority shareholder; and,
- the shares are thinly traded,

the Organization's directors should have recognized this combination of factors were such that merely taking the closing price on the day before was not a suitable method of valuation in these circumstances.

As discussed above, the Organization did not provide documentation to support that the board of directors discussed the purchase of the Archon shares or the gift to Homestead. These transactions were part of a series of transactions that are material by any measure. The audit did not find any discussion, email, notation, or comment from the board of directors, or the member (either incoming or outgoing) about the transactions themselves, the reasons, or the benefits. When asked why these transactions were undertaken, the response from the Organization was to simply note that the gifts came in and went out to qualified donees.

The CRA has been unable to identify any bona fide charitable reason for the Organization's involvement in these transactions. As of the fiscal year ended in 2018, it appears the charity has not distributed any portion of the remaining shares to qualified donees. Although there is no cash loss to the Organization, the CRA believes that the charitable sector lost resources at the time the shares were purchased from [REDACTED] Blusson at \$1.65/share. If the charity had purchased the shares at a value reflective of the circumstances, the charity would still be owed money.

c) Resourcing (a) non-qualified donee(s)

We explained in our AFL that the Organization disbursed \$85,588 to Enabling Environment Endeavours Inc., a non-arm's length corporation given that Mr. Bromley is its [REDACTED] and the Organization's [REDACTED] a director, was not for the benefit of the Organization

but was for the benefit of either Mr. Bromley's personal consulting business and/or the Government of China, both of whom are non-qualified donees.

We also explained that the \$17,920 paid to Benefic Law Corporation, a non-arm's length corporation (Mr. Bromley is the [REDACTED] was not the Organization's charitable expense.

Overall these payments were to non-arm's length non-qualified donees and did not further a charitable purpose nor provide a public benefit.

Organization's Response (copied as written)

"The Organization has purposes which authorizes (sic) it to carry on charitable activities. One of the charitable activities it wanted to carry on was to help China as it sought to draft a law to enable charities to operate legally in China. Creating a legal environment in Communist or post-Communist societies is frequently referred to as creating an "enabling legal environment" for charities. The Organization retained Enabling Environment Endeavours Inc. to carry on this charitable activity to assist China.

There is no doubt that helping a country create a legal environment to authorize citizens and social organizations to lawfully operate charities is a legitimate charitable purpose. The primary foreign expert whom China has relied upon was Blake Bromley. However, at some of the meetings on this proposed law China also invited the Director General of Charities Directorate and lawyers employed by the Department of Justice who advise Charities Directorate. Similarly, from England they invited [REDACTED]

[REDACTED] of the Charities Act passed by the English Parliament in 2006 and other charity lawyers who were recognized as experts in England such as [REDACTED]. Blake worked very closely with the English experts throughout this process in London as well as in China.

China was particularly interested in the impact of the evolution and impact of charity law in the former Soviet Union. Blake Bromley and [REDACTED] were listed as two of the 3 foreign experts relied upon by the Russian Duma in passing Russia's first charity law in 2003. However, the political environment in Russia regressed significantly thereafter and the activities of charities were greatly curtailed. Consequently, China was interested in the evolution of the charitable sector in the Baltic states which had continued to progress towards democracy during the period Russia regressed. Given his experience, they wanted Mr. Bromley to provide an updated current valuation of the law and operating environment of charities in Estonia, Latvia and Lithuania. This expenditure was for a charitable purpose on behalf of the Organization and is a legitimate payment to a non-qualified donee.

As previously set out in this submission, the Organization has a significant investment in Archon shares. There were opportunities to enhance the value of those shares by having Archon make a large acquisition of a Participating Interest in the [REDACTED] which Mr. Bromley was uniquely placed to advance. Consequently, the Organization sought to increase the value of its investment

by retaining Mr. Bromley to work on facilitating this acquisition. This was not an expenditure on charitable activities but was an administrative expenditure to increase the value of its investment.”

CRA’s Response

The explanations provided above do not change our view that the expenditure of \$85,588 to Enabling Environment Endeavours Inc. was for the benefit of either Mr. Bromley’s personal consulting business and/or the Government of China, both of whom are non-qualified donees.

The Organization’s assertion as to how the payment to Benefic Law Corporation for \$17,920 was charitable also does not change our initial position that this payment is not charitable – as enhancing the value of the Archon shares is not a charitable cost of the Organization.

c) Gifts made not at arm’s length

We explained in our AFL that the compliance agreement to eliminate the disbursement quota (DQ) shortfall of \$263,554 signed by Mr. Bromley and Ms. Brandlmayr on March 10, 2010, was not fulfilled. This is because Mr. Bromley was a director of the charity that was the source of the funds for the DQ shortfall payments and was also a director of the recipient charity; therefore the Organization was not in compliance with 149.1(4.1)(d) and could attract a penalty under 188.1(12).

Organization’s Response (copied as written)

“The AFL reports that the auditor has determined that the Organization did not eliminate the disbursement quota shortfall as referenced in the 2010 Compliance Agreement. The AFL indicates that the transactions that took place did not satisfy the DQ pursuant to 149.1(4.1)(d). This finding is based on a CRA determination of non-arm's length relationships that have not been fully addressed or documented. Please provide CRA's analysis of why the relationships are not arm's length within the criteria set out in the Income Tax Act.

This determination is not only subjective, it is also a determination of CRA subsequent to the audit years. At the very least, because the determination is based on a subjective determination of relationships between parties, the reasonable response is an education letter. Alternatively, in an effort to address this compliance issue to your satisfaction, the Organization has discussed this matter with Theanon Charitable Foundation and advises that Theanon Charitable Foundation has agreed to file a T1240 for the appropriate year to document its gift of \$300,000 to the Organization as a designated gift. We understand that is not normal practice regarding designated gifts but offer this solution for your consideration. Please advise if the Organization should seek such action from Theanon Charitable Foundation.”

CRA’s Response

The determination of whether two parties are at arm’s length can be found in subsection 251(1) of the Act. Paragraph 251(1)(a) states that related persons shall be deemed to not deal with each

other at arm's length; paragraph 251(1)(b) deals with a taxpayer and a personal trust; and paragraph 251(1)(c) states that in any other case, it is a question of fact whether two taxpayers are dealing with each other at arm's length.

The Register of Directors and Register of Members for the charities involved show that:

- i) Mr. Bromley was a director [REDACTED] of the donor charity, Theanon, at the time of Theanon's \$300,000 transfer to the Organization;
- ii) Mr. Bromley was a director [REDACTED] of Philanthropy, the charity that received the \$265,000 payment that was intended to eliminate the disbursement quota shortfall identified in the prior audit.
- iii) Mr. Bromley was a director [REDACTED] of the Organization at the time of these transactions.

The fact that Mr. Bromley controlled these charities as a [REDACTED] director establishes that a non-arm's length relationship existed amongst these three charities.

Furthermore, changing a gift to a designated gift would normally have the effect of the Organization not needing to spend the designated gift amount in the year that it was received or the subsequent year. However, the Organization already had a DQ shortfall that was not met; therefore, changing the \$300,000 to a designated gift would only mean that it would not have had to expend this amount in the year received and the DQ shortfall of \$263,554 would continue to exist.

2. Failure to issue official donation receipt in accordance with the Act and/or its Regulations

- i) Receipt format**
- ii) Receipt issued not at fair market value**

It was explained in our AFL that the receipt issued to [REDACTED] Blusson was not issued at fair market value. The receipt was based on the difference between how much the Organization owed [REDACTED] Blusson for the Archon shares purchased at the greater than FMV price of \$1.65/share and the value of the promissory note that Global gifted to the Organization payable to [REDACTED] Blusson. The receipt should not have been issued. However, since it was, the receipt should also have contained [REDACTED] Blusson's middle initial and details of the gift-in-kind.

Organization's Response (copied as written)

"The Organization acknowledges that the receipt issued to [REDACTED] S. Blusson should have included his middle initial and should have included the information regarding the non-cash gift of forgiveness of debt."

CRA's Response

The Organization agreed with the findings regarding the format and content of the receipt, but made no representations regarding the value of the receipt in this instance.

3. Failure to maintain adequate books and records as required

It was explained in our AFL that the Organization's books and records were lacking in that they did not contain supporting documentation, such as records of discussions, emails or other correspondence, that showed that the directors discussed the purchase of the 3,288,400 Archon shares; that the Organization validated the price of \$1.65/share for the purchase of the Archon shares; and, documentation that showed that the directors discussed the decision to gift the 2,000,000 Archon shares to Homestead while incurring an \$800,000 book loss.

In addition, the Organization did not file a Form T2081, Excess Corporate Holdings Worksheet for Private Foundations, to report its excess holdings of Archon shares.

Lastly, the T3010s were not filed on time or in prescribed form even though Mr. Bromley and Ms. Brandlmayr agreed and signed a compliance agreement in 2010 agreeing to file the T3010s on time and in prescribed form.

Organization's Response (copied as written)

"The AFL also reports that the CRA identified that the Organization failed to maintain adequate books and records. While we do not agree that the Organization failed to provide supporting documentation, we cannot argue that the Organization failed to file a T2081 Excess Corporation Holdings Worksheet for Private Foundations for each year, nor can we disagree that the Organization failed to file the T3010 Registered Charity Information Returns on time and in prescribed form.

To begin, the Organization agrees and acknowledges that it was in error when it did not file a T2081 for its 2014 and 2015 fiscal years. For a short time as set out in the AFL, the Organization held 6% and subsequently held 2.39% at the end of the fiscal years. The Organization will review its bookkeeping procedures and practices in this area and suggests that for this particular area on non-compliance, an education letter would be reasonable.

The AFL then reports that the Organization filed its 2014 and 2015 T3010s late. The Organization agrees these filings were not only late which is a compliance issue in itself, but it also resulted in the Organization failing to comply with its 2010 Compliance Agreement. The Organization acknowledges this. The concern for our client is the AFL findings that the "T1240 corrects most of the financial data but that the T3010 contained errors and omissions that were not corrected on the T1240 and these errors were set out in Appendix A of the AFL."

Respectfully, as soon as the Organization discovered that the transactions relating to the Archon shares were missing from the 2014 T3010, it filed a T1240 Charity Information Return Adjustment with the information that was missing. The Organization believes it has provided the

required information in the T1240 necessary to fulfill its filing obligations. The auditor has been provided with a copy of the T1240 so will appreciate that there was a lot of information provided on that form. The T1240 information provided the corrections to the financial information

amounts. As detailed in the AFL Appendix A, Line 130, 1800, 2000 and 4000 of the T3010 are all yes/no answers. While the T1240 did not detail these corrections, we submit that the corrections to the yes/no answers in the T3010, Schedule 5 and the Worksheet for Gifts to Qualified donees all necessarily flow from the corrections to the financial information provided in the T1240. The T1240 also provided corrected information on gifts to Qualified donees. We further note that the CRA website has not been fully updated with respect to the, financial information corrections submitted by the Organization. Consequently, it seems harsh to criticize the Organization on these points."

CRA's Response

The Organization agreed that it:

- i) Failed to file a Form T2081 for each year;
- ii) Failed to file the Form T3010 on time;
- iii) Failed to file the Form T3010 in prescribed form; and,
- iv) Did not comply with its 2010 compliance agreement.

With regard to the identified errors and omissions identified in our AFL at Appendix A, we accept these were addressed through the filing of the T1240.

Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

charitable organization, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

~~qualified donee, at any time, means a person that is~~

(a) registered by the Minister and that is

(i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168.(2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168 (4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172 (3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered

as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister’s decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180 (1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

~~(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's~~
action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Tax and Penalties in Respect of Qualified Donees

188 (1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188 (1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188 (1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is

(a) a registered charity

- (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,
- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

188 (2) Shared liability – revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188 (2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188 (3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies.

188 (4) Joint and several, or solidary, liability – tax transfer

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188 (5) Definitions – In this section,

net asset amount of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

net value of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

189 (6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189 (6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189 (6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.



October 19, 2018

REGISTERED MAIL

Leslie Brandlmayr
Director
Howe Sound Samaritans' Foundation
Box 62
1250-1500 West Georgia St.
Vancouver BC V6G 2Z6

BN #: 89242 0746 RR0001
File #: 1084177

Dear Leslie Brandlmayr:

Subject: Audit of Howe Sound Samaritans' Foundation

This letter results from the audit of Howe Sound Samaritans' Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from February 1, 2013, to January 31, 2015.

On October 19, 2018, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities/lack of public benefit/delivery of non-incidental private and/or undue benefit/resourcing (a) non-qualified donee(s)/gifts made not at arm's length	149.1(1), 149.1(4), 149.1(4.1)(d), 168(1)(b) 188.1(4) and (5) 188.1(12)
2.	Failure to issue official donation receipt in accordance with the Act and/or its Regulations Receipt format Receipt issued not at fair market value	110.1, 118.1, 168(1)(d) Reg. 3500, 3501(1), 188.1(7),
3.	Failure to maintain adequate books and records Lack of supporting documentation Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations Failure to file T3010 Registered Charity Information Return on time and in prescribed form	230(2), 168(1)(e) 149.1(14), 168(1)(c)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Background

The Organization was registered as a private foundation under the fourth head of charity (benefits to the community in a way regarded as charitable at law) on February 19, 1996, with the following objects:

"The objects of the Corporation are:

- a) to fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment and facilities that contribute to the relief of poverty, the advancement of education, the advancement of religion and other purposes which are beneficial to the community as a whole in a way the law regards as charitable;
- b) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, administer and distribute funds and property for the purposes of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of the Income Tax Act and for such other purposes and activities as are authorized for registered charities under the provisions of the Income Tax Act; and
- c) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the foregoing and in furtherance of the objects of the Corporation."

The original directors resigned in November 2000 and were replaced with Leslie Brandlmayr, Blake Bromley (Mr. Bromley) and John Bromley. Mr. Bromley acts as the President, the Secretary, [REDACTED] and Ms. Brandlmayr acts as the Treasurer.

The Organization was inactive from November 2000 until it was activated in April 2005 with the contribution of \$250,000 from Theanon Charitable Foundation (Theanon)¹.

It was explained to the CRA during the audit interview that the purpose of the Organization was to receive the Archon Minerals Ltd. (Archon)² shares that were held by

¹ Theanon Charitable Foundation was revoked for cause in February 2018 and is non-arm's length as Mr. Bromley is a director of Theanon.

² Archon Minerals Ltd. is a thinly held, thinly traded public corporation. [REDACTED]

Theanon, Prescient Foundation (Prescient), and HSEF Renaissance Academy (HSEF Renaissance)³ to assist [REDACTED] Stewart Blusson with tax planning.

Prior audit

An audit of the Organization's 2006 to 2009 fiscal years concluded in 2010 with a Compliance Agreement. Mr. Bromley and Ms. Brandlmayr signed the Compliance Agreement and, as directors, agreed to eliminate the disbursement quota shortfall of \$263,554 and agreed to file the T3010 Registered Charity Information Return (T3010) on time and with accurate information. The signed Compliance Agreement also advised that the Organization could potentially be revoked if the corrective measures were not implemented.

Events and transactions during the current audit period

The following events and transactions occurred during this current audit period:

- i) October 22, 2013 – John Bromley resigned as director and was replaced by Erin Dexter, [REDACTED]
- ii) October 29, 2013 – The Organization purchased 3,288,400 Archon shares at \$1.65 each from [REDACTED] Blusson, resulting in the Organization owing [REDACTED] Blusson \$5,425,860.⁵

Legal ownership of the 3,288,400 Archon shares was not transferred to the Organization at the time of purchase – rather, they were held in bare trusts by the following registered charities that acted as title-holder charities - Prescient (2,000,000 shares), HSEF Renaissance (1,060,000 shares), and Theanon (228,400 shares). The title-holder charities transferred the shares to the Organization's investment account in April 2014.

- iii) October 30, 2013 – Global Charity Fund (Global),⁶ a non-arm's length registered charity, gifted a promissory note valued at \$4,515,757 to the Organization. The promissory note was owed by [REDACTED] Blusson to Global. The Organization assumed

³ Two title-holder charities were non-arm's length with the Organization. Prescient Foundation was revoked for cause in February 2011; HSEF Renaissance Academy is currently registered. Two of Prescient's three directors at the time of the share transaction with the Organization were employees of [REDACTED]. Blake Bromley sat as a director on all three title-holder charities and Ms. Brandlmayr sat as a director on HSEF Renaissance and Theanon.

⁴ [REDACTED]

⁵ $3,288,400 \times \$1.65 = \$5,425,860$.

⁶ Ms. Brandlmayr [REDACTED] were directors of Global at the time of this gift. Mr. Bromley was a Director of Global prior to the gift but he remained as a signatory throughout this period. Global revoked voluntarily in June 2014.

Blusson's debt to Global, and used it as partial payment to purchase the Archon shares from Blusson.⁷ In essence, Blusson exchanged \$4,515,757 personal debt he owed for land he purchased from Global, for his Archon shares.

- iv) December 20, 2013 – Blusson forgave the remaining amount owed to him for the purchase of the Archon shares in exchange for a \$911,103 official donation receipt (\$5,425,860 - \$4,515,757 = \$910,103).⁸
- v) January 15, 2014 – The Organization gifted 2,000,000 of the 3,288,400 Archon shares to Homestead On The Hill Foundation (Homestead).⁹ A bare trust agreement for the Organization to hold the shares on behalf of Homestead was signed on the same date. This means these 2,000,000 Archon shares held by Prescient in trust for Blusson and then held by Prescient in trust for the Organization, were then held in trust by Prescient for Homestead. The 2,000,000 Archon shares were eventually transferred to Homestead's investment account in June 2014.

Concerns identified related to these transactions are explained below.

Identified areas of non-compliance

1. Failure to devote resources to charitable activities/ lack of public benefit/delivery of non-incidental private and/or undue benefit/payments to non-qualified donees/gifts made not at arm's length

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.¹⁰ In summary, a private foundation may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

⁷ The unsigned promissory note, now due to the Organization, was held in bare trust by Global.

⁸ This \$1,000 discrepancy between the calculation and the official donation receipt amount appears to be an error by the Organization.

⁹ Erin Dexter, director of the Organization, became a director of Homestead on January 30, 2014, 16 days after the gift of the 2,000,000 Archon shares.

¹⁰ This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drlcg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

To be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries.¹¹ The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.¹²

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.¹³ Reasonable means related to the need and no more necessary to achieve the purpose,¹⁴ and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.¹⁵ It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.¹⁶

With regard to the devotion of resources, in accordance with the provisions of the Act, a registered charity may only properly use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued supervision, direction and control, and for gifting to “qualified donees” as defined in the Act.

¹¹ See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

¹² For more information, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

¹³ See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v St Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

¹⁴ See for example *Joseph Rowntree Memorial Housing Association Ltd and Others v AG*, [1983] Ch 159 (Ch D); *In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd*, [1969] 1 AC 514 (PC).

¹⁵ *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Inland Revenue Commissioner v City of Glasgow Police Athletic Association*, [1953] AC 380 (HL); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

¹⁶ See for example *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539; *Canterbury Development Corporation v Charities Commission*, [2010] NZHC 331; *Hadaway v Hadaway*, [1954] 1 WLR 16 (PC); *Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission*, [1975] 64 DLR (3d) 531.

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee.

Purchase of Archon shares

The purchase of 3,288,400 Archon shares by the Organization from [REDACTED] Blusson was transacted at \$1.65 per share on November 29, 2013. The Organization explained this purchase price was based on the closing price on the TSX Venture Exchange (TSXV) on November 28, 2013. Ten thousand three hundred and forty (10,340) Archon shares were traded on that day on the TSXV. This share volume was an anomaly as the Archon shares are thinly traded. To illustrate, only 344 shares in total were traded in the prior 20 trading days.

This \$1.65 closing price was also an anomaly as it was \$.45 higher than the previous 17 trading days' closing price of \$1.20. Our research found no news release, or similar event, close to November 28, 2013, to trigger a price increase. There were no reported Archon share trades on the TSXV on November 29, 2013. The Archon share price fell back to \$1.27 on the next trading day, December 2, 2013, and remained at that price for the next 14 trading days.

Due to these identified anomalies, a fair market valuation of the Archon shares was obtained from the Business Equity Valuations (BEV) area of the CRA. Based upon the review by BEV, it was determined that even though the shares were traded on a listed stock exchange, the volume of shares purchased far exceeded the daily average volume of shares traded. Therefore, if a person was to sell 3,288,400 shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. As a result, the valuation by BEV determined a fair market value in the range of \$.94 to \$1.07 per Archon share with a median fair market value of \$1.01 as at November 29, 2013. This price range is a result of applying a block discount related to the high volume of shares purchased at once.

If the Archon shares were purchased at the median fair market value as determined by our BEV area, the total purchase cost would have been \$3,321,284. As the promissory note gifted to the Organization was worth \$4,515,757, this means that after applying this amount towards the share purchase debt, [REDACTED] Blusson would still owe the Organization \$1,194,473 for the remaining amount of the promissory note thereby eliminating the donation receipt that was issued for \$911,103.

In addition to the outstanding balance on the promissory note, using the median value determined by BEV, the Organization over-compensated [REDACTED] Blusson on the purchase of

the shares by \$2,104,576¹⁷ resulting in a private and/or undue benefit conferred by the Organization on ■■■ Blusson.

Overall, the transactions involving the purchase of the 3,288,400 Archon shares did not further a charitable purpose, provided no public benefit and in fact provided a non-incidental private and/or undue benefit to ■■■ Blusson. We conclude that the Organization has not devoted its resources exclusively to charitable purposes and activities, as required by subsection 149.1(1) of the Act.

Providing an unacceptable private and/or undue benefit means that all of the Organization's resources are not devoted to exclusively charitable purposes and activities, as required by subsection 149.1(1) of the Act and provides grounds for revoking the registration of a registered charity, under subsection 168(1) and paragraph 149(4)(b.1).

In addition, a registered charity that confers an undue benefit may be liable for a penalty equal to 105% of the amount of the benefit, increasing to 110% if the offence is reproduced within five years.¹⁸ Accordingly it appears the Organization may be liable for a penalty that ranges from \$2,002,636 to \$2,451,502 (\$1,907,272 to \$2,334,764 x 105%) using the values determined by BEV.

Due diligence of Board of Directors

An organization's Board of Directors is responsible to safeguard the organization's assets and act in the best interests of the organization they represent. A Board must ensure that material transactions occur at fair market value. To merely accept the latest closing price of a share as fair market value, for a transaction involving millions of dollars, does not equate to due diligence and does not fulfill the obligations of the Board to act in the best interests of the Organization.

When complying with the requirements of the Act, it is expected that directors would use a high degree of diligence, using the sources of information, facilities and resources available. Paying an amount in excess of the fair market value for the Archon shares shows the directors were not diligent in their duties.

¹⁷ $3,288,400 \times \$1.65 = \$5,425,860$ original purchase price.

$3,288,400 \times \$0.94 = \$3,091,096$ – lowest fair market value per BEV valuation.

$3,288,400 \times \$1.07 = \$3,518,588$ – highest fair market value per BEV valuation.

$3,288,400 \times \$1.01 = \$3,321,284$ – median fair market value per BEV valuation.

$\$5,425,860 - \$3,091,096 = \$2,334,764$ – overcompensated amount at \$0.94 purchase price.

$\$5,425,860 - \$3,518,588 = \$1,907,272$ – overcompensated amount at \$1.07 purchase price.

$\$5,425,860 - \$3,321,284 = \$2,104,576$ – overcompensated amount at \$1.01 median price.

¹⁸ See subsection 188.1(4) of the Act.

The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity and the interests of the charity should be put ahead of the interests of any other individual or entity.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of a charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity.

It is our view that the Organization did not acquire the Archon shares for investment purposes since 2,000,000 of the shares were held for a brief period of time (approximately 47 days). Furthermore, the Organization did not receive any financial compensation related to the disposition of the shares since they were gifted to another registered charity (Homestead) at \$1.25 per share, resulting in an \$800,000 loss to the Organization.¹⁹

A review of the Organization's Board meeting minutes and other books and records revealed that although the Board "accepts" the annual financial statements at its annual general meetings,²⁰ there was no indication of any discussions taking place at Board meetings regarding these material transactions before the transactions occurred.

Payments to non-qualified donees

The Organization disbursed \$85,588 to a non-arm's length corporation, Enabling Environment Endeavours Inc.²¹ We queried the purpose of these costs and have carefully considered your responses.²² Based on the responses you provided, it is our position that this \$85,588 distribution of the Organization's charitable resources was for the benefit of either Mr. Bromley's personal consulting business and/or the Government of China, both of whom are non-qualified donees.

The Organization also paid \$17,920 to Benefic Law Corporation, a non-arm's length corporation.²³ The invoice stated that it was "for professional services related to all dealings with Stu Blusson and transfer of income producing assets into Archon and issues

¹⁹ $2,000,000 \times (\$1.65 - \$1.25) = \$800,000$.

²⁰ No minutes recording acceptance of the 2014 financial statements was provided.

²¹ Enabling Environment Endeavours Inc. is owned 100% by Blake Bromley. This was an expense in the 2016 fiscal year; however the invoice was provided during the audit field visit so queries were made about this expense.

²² CRA queries were dated October 18, 2016, and the Organization's responses were received in January 2017.

²³ Benefic Law Corporation is owned 100% by Blake Bromley.

related to enhancing the value of the Foundation's Archon holdings". We queried how these legal costs specifically contributed to the charitable purposes of the Organization. In summary, the explanations provided indicated that these legal consultations were necessary in order to increase the value of the Archon shares, and therefore, the investment value to the Organization. Although this may support the need for legal consultations, it is not a charitable cost of the Organization.

As a result, it is our view that the Organization distributed its charitable resources to non-arm's length, non-qualified donees and that the distributions did not have a charitable purpose or a public benefit.

Gifts not at arm's length

As stated earlier in this letter in the Prior audit section, Mr. Bromley and Ms. Brandlmayr signed the 2010 Compliance Agreement, and, as directors, agreed to eliminate the disbursement quota shortfall of \$263,554.

The disbursement quota shortfall was reported as being eliminated in the 2011 fiscal year when the Organization distributed \$265,000 to Philanthropy Without Frontiers/Philanthropie Sans Frontieres (Philanthropy), a non-arm's length charity of which Mr. Bromley was a director, and \$9,800 to 4 What Matters Foundation (4 What Matters), a non-arm's length charity of which Mr. Bromley was a director. A \$300,000 contribution from Theanon, a non-arm's length charity of which Mr. Bromley was also a director, was the source of the funds for the \$265,000 payment to Philanthropy and the \$9,800 payment to 4 What Matters.

As stated in 149.1(4.1)(d), a registered charity can be revoked if the Organization did not spend the amount of the gift from the non-arm's length charity, in addition to its disbursement quota on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.

The gift of \$300,000 from a non-arm's length charity and the subsequent \$274,800 redistribution of that gift to non-arm's length charities meets the parameters of this subsection of the Act. As a result, the Organization did not comply with the 2010 Compliance Agreement. These types of transactions could also attract a penalty under subsection 188.1(12). Consequently, in addition to possibly being revoked, the Organization could also be liable for a penalty of \$302,280.²⁴

²⁴ $\$274,800 \times 110\% = \$302,280$.

Summary

Based on our findings, the Organization has shown it does not devote all of its resources to charitable activities. Rather, it appears that the Organization was involved in a series of pre-ordained circular transactions among related persons and charities that occurred in a limited amount of time. These transactions were undertaken to assist [REDACTED] Blusson with tax planning, to provide a non-incidental private and/or undue benefit to [REDACTED] Blusson, and had no apparent charitable purpose or public benefit.

Furthermore, the Organization's directors failed to demonstrate due diligence by allowing the Organization to purchase Archon shares at a price greater than fair market value and then dispose of 61% of the purchased shares, 47 days later, at an \$800,000 loss. As such, it is our position that the directors used the Organization to transact this series of transactions for the benefit of [REDACTED] Blusson.

It is also our position that the Organization distributed \$103,508 of its charitable resources to non-qualified donees.

Based on the above findings, it is our position that the Organization failed to meet the requirements of subsections 149.1(1) of the Act, that being that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit, without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to issue donation receipt in accordance with the Act and/or its Regulations

Receipt format

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Review of the Organization's one official donation receipt issued in the audit period for \$911,103 shows the Organization did not issue the official donation receipt according to the requirements of the Regulations. Specifically,

- i) No middle initial of the donor is included on the receipt; and,

- ii) No details are provided on the receipt regarding the non-cash gift of forgiveness of debt.

Receipt issued not at fair market value

Regulation 3501(h)(ii) states that every official receipt shall show clearly the amount that is the fair market value of the property donated at the time that the gift is made.

As detailed above, the official donation receipt issued for \$911,103 resulted from the computation of the difference between the purchase of 3,288,400 Archon shares at \$1.65 (\$5,425,860) and the value of the promissory note (\$4,514,757) that was exchanged for the Archon shares.

The CRA recognizes the complexity of valuing non-cash gifts and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, the onus is on the Organization to ensure that the receipt value assigned to a donated non-cash gift reflects the fair market value of the gift.

Subsection 188.1(7) states a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

It is our view that the Organization exercised a lack of due diligence when determining the fair market value of the Archon shares. Mr. Bromley, as the director and planner/creator of these transactions knew or should have known that had the shares been purchased openly on the stock exchange that the market would not have endured a value of \$1.65/share. Similarly, [REDACTED] Blusson, [REDACTED] knew or should have known that the value of \$1.65 used for these transactions was not a rate that would have been tolerated in an open market. Ms. Brandlmayr, as the director and signatory on the official donation receipt knew or should have known that the value of \$1.65 used for these transactions was over-valued.

In addition, based on the fair market values determined by the CRA's BEV area, Dr. Blusson should not have received an official donation receipt. In fact, if the Archon shares were purchased at the median fair market value as per BEV, [REDACTED] Blusson would still be indebted to the Organization by way of the outstanding promissory note.

Accordingly, it is our position that the Organization has failed to meet the requirements of sections 3500 and 3501 of the Regulations. For these reasons, and each of these

reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act. A penalty may also be applied as per ~~188.1(7), which would total \$45,555.15 (5% of \$911,103).~~

3. Failure to maintain adequate books and records as required

Pursuant to subsection 230(2) of the Act, every registered charity “shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.”

In addition, subsection 230(4) also states “Every person required by this section to keep records and books of account shall retain:

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed;
- b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.”

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations and the law, which have held that:

- a) it is the responsibility of the registered charity to prove that its charitable status should not be revoked;²⁵
- b) a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is

²⁵ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

not sufficient to supply the required documentation and records subsequent thereto;²⁶ and

- c) the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.²⁷

Lack of supporting documentation

The Organization's books and records do not support that its transactions were made in support of a charitable purpose or were done for the public benefit.

Specifically the Organization's books and records do not contain:

- i) Supporting documentation, such as records of discussions, emails or other correspondence, that shows the directors discussed the purchase of the 3,288,400 Archon shares;
- ii) Supporting documentation, such as records of discussions, emails or other correspondence, that shows the directors discussed and validated the price of \$1.65/share for the purchase of the Archon shares; and,
- iii) Supporting documentation, such as records of discussions, emails or other correspondence that shows the directors discussed the decision to gift the 2,000,000 Archon shares to Homestead while incurring an \$800,000 loss.

The CRA attempted to obtain supporting documentation for the decisions noted above, but the Organization did not provide additional documentation or information to support the transactions.

Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations

Effective March 19, 2007, a private foundation that holds issued and outstanding shares (whether public or private) of a share class of a corporation may be subject to certain requirements.

²⁶ Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

²⁷ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

As per page five of the Archon Minerals Ltd. Notice of Meeting and Management Information and Proxy Circular dated November 26, 2013, the Archon shares purchased by the Organization represented approximately 6%²⁸ of the total issued and outstanding shares of the Company. The Organization continued to own 2.39% of the outstanding Archon shares after the 2,000,000 shares were gifted to Homestead in January 2014.

If a foundation's total corporate holdings percentage of any class of shares of a corporation exceeds 2% of the issued and outstanding shares of that class at any time during its fiscal period, the foundation has to determine and report to the CRA the percentage of shares that it and any relevant persons with material interests held, at the end of that fiscal period, of each class of shares of the corporation. This required reporting must be reported on Form T2081, Excess Corporate Holdings Worksheet for Private Foundations, and filed with the T3010.

It is noted that this required form was not filed during or after the audit period.

Failure to file T3010 Registered Charity Information Return on time and in prescribed form

Subsection 149.1(14) of the Act states that every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization signed a Compliance Agreement in 2010 agreeing to file its T3010 accurately and on time. This audit has shown that the Organization filed its 2014 and 2015 T3010s late, and therefore, did not comply with the 2010 Compliance Agreement. The Organization filed its original 2014 T3010 with material transactions omitted. A T1240 Registered Charity Adjustment Request (T1240) was filed to correct most of the financial data; however, the 2014 T3010 contained further errors and omissions that were not corrected on the T1240. Details related to these errors and omissions are detailed in Appendix A.

²⁸ (3,288,400/53,716,758) issued and outstanding shares of Archon Minerals Ltd.

Summary

In summary, the Organization was not able to support material decisions/transactions with documentation; did not prepare its official donation receipt in accordance with the Regulations; failed to file Form T2081 Excess Corporate Holdings Worksheet for Private Foundations; and, did not complete its T3010 in prescribed form or file its 2014 and 2015 T3010s on time.

As a result, it is our view that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because the Organization fails to comply with or contravenes any sections of 230 to 231.5 of this Act. For this reason alone there are grounds for revocation of the Organization's registered status.

The Organization's options:

a) Respond

If the Foundation chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

b) Do not respond

The Foundation may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,

[Redacted Signature]

Terri Letchford, [Redacted]
Auditor
Vancouver Island and North Tax Services Office

Telephone: 250-363-0518
Facsimile: 250-363-3000
Address: c/o 9755 King George Blvd.
Surrey BC V3T 5E1

Enclosure

HOWE SOUND SAMARITANS' FOUNDATION

T3010 ERRORS AND OMISSIONS

APPENDIX A

The Organization made the following errors or omissions on its 2014 T3010 Registered Charity Information Return

Section C: Programs and general information

C1 Line 1800 – Was the charity active during the fiscal period?

This was answered "no "; however, the Organization was active during the fiscal period as it purchased shares, received gifts and made a gift to a qualified donee.

C3 Line 2000 – Did the charity make gifts or transfer funds to qualified donees or other organizations?

This was answered "no "; however, the Organization gifted 2,000,000 Archon Minerals Limited shares to a qualified donee.

C11 Line 4000 – Did the charity receive any non-cash gifts for which it issued tax receipts?

This was answered "no"; however, [REDACTED] Blusson forgave an amount due to him for the purchase of Archon shares from him, in exchange for an official donation receipt for \$911,103.

Foundations – Schedule 1

Line 130 – Did the foundation own more than 2% of any class of shares of a corporation? If yes, you must complete and attach Form T2081, Excess Corporate Holdings Worksheet

This was answered "no", however; the Organization owned 1,288,400 of the 53,716,758 issued and fully paid Archon Minerals Limited shares at the end of the 2014 fiscal period. This equates to 2.38% of the issued and fully paid Archon Minerals Limited shares.

The T2081 Excess Corporate Holdings Worksheet was not completed in 2014 or 2015.

Schedule 5 – Non-Cash Gifts

~~This schedule was not completed even though the Organization issued a tax receipt to~~
~~Blusson for \$911,103 that represents forgiveness of debt.~~

Qualified Donees Worksheet

This worksheet is not completed even though the Organization gifted 2,000,000 Archon Minerals Limited shares to Homestead on the Hill Foundation on January 15, 2014.